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To: Tarr, Jeremy M [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=98859532088e4437968231eb6fef6b70-jmtarr1]
Subject: Appeals Court Rules in Solar-Church Test Case



Building People Power for Climate & Energy Justice

Court of Appeals Rules for Duke Energy in Solar-Church Test Case

Powerful dissent by Judge Dillon opens path to Supreme Court appeal by NC WARN and Faith Community Church

The NC Court of Appeals [ruled for Duke Energy](#) in the [test case](#) where NC WARN has been selling solar power to the Faith Community Church in Greensboro.

We disagree with the Court's decision. Third-party sales such as this one are in the public interest and are in accord with the NC General Assembly's declared policy "to encourage private investment in the development of renewable energy," as noted in Judge Chris Dillon's dissent.

NC WARN is strongly considering an appeal to the NC Supreme Court, and Judge Dillon's extensive and powerful dissent guarantees our right to do so. Judge Dillon cited the federal constitution and multiple NC Supreme Court decisions regarding private property rights, and explained that the Greensboro test case does not make NC WARN a "public utility" as claimed by Duke Energy and the NC Utilities Commission (NCUC).

The judge noted that the NCUC, in its order for Duke, reversed its own ruling in a previous, similar case.

The test case is a challenge to Duke Energy's blockade against competition from companies that install solar systems on rooftops with little or no up-front cost to the customer, then sell juice to the customer. Such financing arrangements have been a key to the growth of rooftop solar in many other states.

Duke Energy has been fighting against third-party solar in order to dampen the surge in solar power and retain its monopoly control.

The legal status of third-party solar in North Carolina was unclear when NC WARN first asked the

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NCUC for a declaratory ruling on its contract partnership with Faith Community Church two years ago. When NCUC ruled the arrangement illegal, the case went to the Court of Appeals. While that appeal was pending, this year's House Bill 589 explicitly outlawed third-party sales, likely in response to this case.

That provision of HB 589 is very possibly unconstitutional, as suggested in Judge Dillon's dissent.

The \$60,000 penalty that Duke persuaded regulators to levy against NC WARN remains suspended pending outcome of [this case](#).

Now in its 29th year, NC WARN's mission urgency is to induce Charlotte-based Duke Energy – one of the world's largest corporate utilities – to make a strong shift to clean, affordable energy in order to stem pollution's damage to communities, and to help avert climate tipping points and ongoing rate hikes.

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